* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on : February 2, 2007
Date of Decision : February 22, 2007

\+ W.P. (Civil) No. 3605/2005 & CM 2799/2005(stay)

\# MAM CHAND ..... PETITIONER
! Through : Mr. R.K. Saini, Advocate

versus

$ DDA ..... RESPONDENT
^ Through: Ms. Monica Sharma, Advocate

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

: Dr. S. Muralidhar, J.

1. The petitioner applied for a flat under the Ambedkar Awas Yojana in 1989. By a letter dated 17.03.2000 the Delhi Development Authority (DDA), the Respondent, informed the petitioner of the allotment to him of an MIG flat No. 35, 3rd Floor, Pocket D, Sector 17, Dwarka on 'cash down' basis. The letter indicated the total cost to be Rs.7,24,600. It required the petitioner to deposit Rs.20,000 on or before 16.04.2000 and a further sum of Rs.6,99,780 on or before 15.6.2000. The petitioner paid Rs.20,000 on 10.04.2000. The petitioner, working as a Senior Judicial Assistant in this Court, applied for and obtained a house building advance (HBA) and deposited

Rs.3,64,800 with the DDA on 31.05.2000. He informed the DDA that he was making arrangements to pay the balance amount.

2. The petitioner states that after he came to know that essential amenities like water and electricity were not available at the location he decided to defer making the balance payment in accordance with the existing policy of the DDA. On 16.10.2002 the DDA issued him a show cause notice asking him to explain why the allotment should not be cancelled for non-payment of the full amount. The petitioner by his letter dated 30.10.2002 informed the DDA that due to non-availability of basic amenities at the flat, the balance amount was not paid. He added that since the amenities were now stated to be available, he should be granted one months' time to deposit the balance amount.

3. The petitioner deposited Rs.78,000 on 16.12.2002. Thereafter on 30.12.2002 the petitioner received another notice from the DDA asking him to show cause within 15 days why the allotment should not be cancelled. The petitioner by his letter dated 8.01.2003 informed the DDA that he was already making arrangements to raise a loan from the ICICI Home Finance to pay the balance amount of Rs.2,50,000. He accordingly requested that the show cause notice be withdrawn.

4. When the petitioner did not hear from the DDA, he presumed that the show cause notice stood

withdrawn. He then deposited Rs.2,50,000 on 30.1.2003 and informed the DDA accordingly. By a letter dated 11.2.2004 the DDA called upon the petitioner to deposit Rs.1,93,110 towards interest and restoration charges. The petitioner made a representation on 1.6.2004 to the DDA stating that interest and restoration charges were liable to be waived in terms of a circular dated 19.2.2001 issued by the Commissioner (Housing), DDA. He also pointed out that despite making the full payment on 30.1.2003, the possession of the flat had still not been handed over.

5. On 1.3.2005 the petitioner filed the present writ petition challenging the letter dated 11.02.2004 issued by the DDA calling upon him to make payment towards interest and restoration charges. The contention of the petitioner is that it is the DDA that has to pay him interest on the amounts already deposited by him with them at the rate of at least 12 to 13% and if the amounts were so calculated no amount would be due from the petitioner to the DDA.

6. Although initially a counter affidavit was filed by the DDA denying the contentions of the petitioner altogether, by an order dated 21.7.2006 this court permitted DDA to file an additional affidavit to bring on record the details including the date on which the possession of the flat in question was ready to be given to the petitioner.

7. In its additional affidavit dated 28.8.2006, the DDA stated that the basic amenities were made available in the 292 MIG houses at Dwarka from May 2001. Nevertheless it contended that since delay occurred in the petitioner making the balance payment of Rs.2,50,000, and the flat had been allotted on a cash down basis, the cancellation of his allotment was justified. Consequently, the levy of interest and restoration charges was justified.

8. Mr. R.K. Saini learned counsel appearing for the petitioner submits that on DDA's own showing it is clear that the MIG flat in question was not ready for being given possession of till May 2001. He places reliance upon an office order dated 19.2.2001 issued by the DDA which sought to bring on par the policy governing payment of interest in respect of flats which had been allotted on hire purchase basis and those on cash down basis and were not ready for delivery. Prior to this, while hire purchase allottees were given the facility of deferment of monthly instalments due to non-availability of the flat, such facility was not available to those who had been allotted flats on a cash down basis. Paras 1 and 2 of the said office order dated 19.2.2001 reads as under:

> "In the cases of allotment of flat where availability of water supply and electricity is delayed resulting into non-issuance of possession letter, even when allottees have paid the demanded amount, the only relief being given to the allottee is by way of deferment of

monthly installments in case of Hire Purchase Allotments.

2. In order to treat cash down allottees at par with the hire purchase allottees, it was decided with the approval of VC that demanded amount on cash down basis may be split into two equal parts representing

a) Initial Demanded Amount.

b) Total amount payable as instalments.

On 50% of the demanded amount on cash down basis, no interest is being charged for the delayed payment before the electricity/water supply becomes available at site. However, on the balance 50% amount, whatever delay takes place, interest is to be charged as per policy of DDA."

9. Mr. Saini places reliance upon a judgment of the learned Single Judge of this Court dated 13.10.2003 in CWP No. 3770 of 2003 (***Rattan Chand v. Delhi Development Authority***), where in similar circumstances, the learned Single Judge required the DDA to pay interest to the allottee and to also give possession of the flat within a period of 15 days.

10. In reply it is submitted by Ms. Monica Sharma, learned counsel for the DDA that in such instances the DDA is not required to pay any interest higher than 7% per annum and definitely not 12 to 13% per annum. She sought to distinguish the judgment in ***Rattan Chand*** and submitted that by the office

order dated 19.02.2001, no interest higher than 7% would be payable. She further reiterates that in the present case since the balance amount of the Rs.2,50,000 was paid belatedly, the DDA was justified in cancelling the allotment.

11. On an examination of the facts of the present case it appears that the petitioner is justified in seeking a direction to the DDA not to charge interest or restoration charges and to give him possession of the flat which has already been allotted to him. A perusal of the allotment letter issued initially to the petitioner informing him of the allotment of the MIG flat at Dwarka indicates that the net amount payable between 18.3.2000 and 16.5.2000 was Rs.6,92,851.89 and time was extended up to 15.6.2000, in which event the net amount payable was Rs.6,99,780/-. As regards the payment of Rs.20,000 as confirmation deposit it was to be done by 16.4.2000 and it was paid by the petitioner on 10.4.2000. As regards the payment of the next instalment the petitioner has produced a letter of the NCT of Delhi dated 11.5.2000 sanctioning him a loan in the sum of Rs.3,64,800. It appears that on 30.5.2000 the said sum was deposited by the petitioner with the DDA along with a letter dated 31.5.2000 which letter appears to have been received by the DDA. It must be recalled that the outer limit of 15.6.2000 for making the balance amount had still not expired.

12. What happened thereafter is significant. The additional affidavit filed by the DDA itself shows that these MIG flat's were

not ready for delivery till May 2001. By this time the circular dated 19.2.2001 had already been issued. That permitted deferment of payment of instalments if 50% of the demanded amount had already been paid on a cash down basis where the flat was not ready for delivery. Admittedly the petitioner had by this time already paid more than 50% of the demanded amount and there was no reason why the office order dated 19.2.2001 should not have been applied to him. Therefore the show cause notice issued on 16.10.2002 requiring the petitioner to show cause why the allotment of the flat should not be cancelled for non-payment of the balance instalment was clearly unjustified.

13. The counsel of the petitioner is right in contending that if the flats in question were ready only in May 2001, not only should the DDA have determined the instalments payable after that date but should have also informed the petitioner of the new schedule of payment. However it appears that the DDA failed to do this.

14. On his part, the petitioner replied to the show cause notice dated 16.10.2002 informing the DDA of the payments in the sum of Rs.4,03,400 already made to it till that date. He also pointed out that being a government employee having government accommodation his house rent allowance was being deducted from his salary. He accordingly asked for one more month to deposit the balance amount.

15. It is not in dispute that the petitioner deposited the further sum of Rs.78,050 on 16.12.2002. Despite the receipt of this sum, he was issued a further show cause notice on 30.12.2002 asking him to show cause why the allotment should not be cancelled. The petitioner replied on 8.1.2003 again pointing out all the sums paid by him till that date and indicating that the balance amount payable by him was only Rs.2,50,000. Within 22 days thereafter on 30.1.2003 the petitioner made the balance payment of Rs.2,50,000 to the DDA. Thus, as far as the petitioner was concerned on 30.1.2003 the entire amount that was due towards the flat was paid by him.

16. Not only did the petitioner not receive any acknowledgment from the DDA but to his surprise received the impugned letter dated 11.2.2004 stating that he was required to deposit Rs.1,93,110 by 28.2.2004 towards interest and restoration charges on account of late payment.

17. It appears that when the DDA issued the letter dated 11.2.2004, it did not account for the fact that the petitioner had made the entire payment for the flat in question by 30.1.2003. Clearly the DDA also paid no attention to its own circular of 19.2.2001 which had allowed deferred instalment basis to even cash down allottees in whose cases the flats had not been ready for allotment till May 2001. It was incumbent on the DDA to apply the circular to the petitioner and fix the new schedule of instalments and inform the petitioner accordingly. The DDA did

not do so and no explanation is forthcoming as to its failure to do so.

18. Further, the DDA could not have unilaterally decided to cancel the allotment. Nothing has been shown as to when this cancellation of allotment took place and whether in fact the petitioner was informed of the cancellation of the allotment. In the above circumstances the cancellation of the allotment, if at all it did take place, is clearly unsustainable in law. If the cancellation of allotment is not legal, the question of the DDA demanding restoration charges does not arise. Therefore, by the letter dated 11.2.2004 the levy of restoration charges is clearly unsustainable.

19. As regards the claim of interest, on the sums already paid by the petitioner to the DDA upto 30.1.2003, the petitioner is clearly entitled to interest. He was also entitled to interest at 7% on the 50% amount deposited on cash down basis pursuant to the office order dated 19.2.2001, paras 1 and 2 of which have already been adverted to earlier. Para 3 of the said order reads as under:

> "3. However, there are cases of cash down allotments, where the allottee has already made all the payments. They have pleaded that they are paying interest to the employer/financial institutions and also incurring additional expenditure on payment of rent of the house occupied by them. Therefore, it has now been decided that in such cases where:
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> a) Possession has not been given to them for want of civic amenities.

b) Possession given to them without services.

c) Possession given to them after the civic amenities were made available,

to pay interest @ 7% p.a. on 50% of the amount deposited by the allottees on cash down basis till the last date of the month in which the electricity and water supply become available."

20. Therefore, far from the petitioner having to pay any interest, it appears on the conspectus of the facts of the present case that it is the DDA that has to pay interest to the petitioner on the sums already deposited with it by the petitioner.

21. The decision of the learned Single Judge of this Court dated 13.10.2003 in ***Rattan Chand*** is clearly applicable to the facts of the present case. That was a case where the petitioner who had been allotted a flat delayed making the payment of the instalments. The petitioner there had taken a loan from the GPF account and belatedly made the payment of the balance amount. His allotment was cancelled on a date subsequent to the date on which he made the payment. In those circumstances this court found the decision of the DDA to cancel his allotment to be unreasonable. It was noticed that the full deposit of the amount by the petitioner, though made belatedly, was before the date of cancellation of the allotment. It was accordingly held that the cancellation was illegal and there could be no demand of restoration charges. Further this court awarded interest at 13% per annum on the sums deposited by the allottee with the DDA.

There is no reason why the said judgment should not be applicable to the facts of the present case.

22. The writ petition succeeds and is allowed with directions as indicated hereafter. A direction is issued to the DDA to calculate the amounts payable by it to the petitioner in terms of the circular dated 19.02.2001 and the decision of this Court in ***Rattan Chand***. This will include interest payable to him in terms of this circular at 7% per annum on the 50% amount deposited by him and thereafter, as per the dictum in ***Rattan Chand***, at the rate of 13% per annum from the date of the deposit of the balance amount till date. The refund cheque, if any should be issued to the petitioner within a period of four weeks from today. In addition, the respondent will pay to the petitioner, within a period of four weeks from today, costs of Rs.5,000/-. The petitioner should be restored the allotment and put in possession of the flat within a period of eight weeks from today. The writ petition is allowed with the above directions. The application stands disposed of.

S.MURALIDHAR,

J.
February 22, 2007
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